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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION SIX

A.D.,

Petitioner,

v.

THE SUPERIOR COURT OF THE
COUNTY OF VENTURA,

Respondent;

VENTURA COUNTY HUMAN
SERVICES AGENCY,

Real Party in Interest.

2d Juv. No. B240808
(Super. Ct. Nos. J066836, J066837)
(Ventura County)

Petitioner A.D. (mother), appearing in propria persona, seeks an extraordinary writ vacating the order of the juvenile court setting a permanent planning hearing with regard to her two minor daughters pursuant to Welfare and Institutions Code¹ section 366.26. We deny the petition because petitioner has not complied with the requirements of rule 8.452 of the California Rules of Court.²

¹ All further statutory references are to the Welfare and Institutions Code.

² All further references to rules are to the California Rules of Court.

FACTUAL AND PROCEDURAL BACKGROUND

In December 2007, mother's eight- and five-year-old daughters were declared dependents under section 300 due to mother's involuntary psychiatric hospitalization. The children were returned to mother's custody following a year of reunification services, and the dependency case was subsequently dismissed following an additional 10 months of family maintenance services.

On February 23, 2011, Ventura County Human Services Agency (HSA) filed another dependency petition following a domestic violence incident involving mother, the minors' presumed father, and a maternal aunt.³ The court granted mother reunification services, and the children were placed with their paternal aunt. On August 4, 2011, mother filed a section 388 petition requesting that the children be removed from their paternal aunt's custody and placed with their maternal grandmother. The court denied the petition.

On October 5, 2011, the court terminated mother's reunification services due to her noncompliance with her case plan and ordered long-term foster care for both children. Following a contested post-permanency review hearing held on April 23, 2012, the court issued an order setting a section 366.26 hearing to consider a permanent plan of legal guardianship with the paternal aunt. Mother sought extraordinary writ relief from that order.

DISCUSSION

Mother's petition for extraordinary writ requests a temporary stay of the juvenile court's order setting the matter for a section 366.26 hearing on the ground that she disagrees with the court's decision to appoint the paternal aunt as legal guardian. In its opposition, HSA contends the petition should be denied because it fails to comply with the applicable procedural requirements and in any event lacks merit. HSA's position is well taken.

³ J.H., the minors' presumed father, is not a party to these writ proceedings.

Pursuant to rule 8.452(a)(1)(D), a petition for writ relief from an order setting a section 366.26 hearing must include "[a] summary of the grounds of the petition." The petition must also be accompanied by a memorandum providing "a summary of the significant facts" with supporting references to the record. (Rule 8.452(b)(1).) Moreover, "[t]he memorandum must state each point under a separate heading or subheading summarizing the point and support each point by argument and citation of authority." (Rule 8.452(b)(2).) The memorandum "must, at a minimum, adequately inform the court of the issues presented, point out the factual support for them in the record, and offer argument and authorities that will assist the court in resolving the contested issues." (*Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 583.)

Although the petition must be liberally construed (rule 8.452(a)(1)), such a construction cannot cure a complete failure to comply with rule 8.452. The petition here does not contain a memorandum with a summary of the significant facts with supporting references to the record, nor does it "offer argument and authorities that will assist the court in resolving the contested issues." (*Glen C. v. Superior Court, supra*, 78 Cal.App.4th at p. 583.) Instead, mother merely offers unsupported allegations of fact and other evidence not offered below purporting to demonstrate that the paternal aunt is unfit to serve as the children's legal guardian. As HSA notes, the paternal aunt's fitness in this regard was not at issue when the court set the matter for a section 366.26 hearing. Rather, the issue was whether mother had met her burden of showing that further efforts at reunification were in the children's best interests. (§ 366.26, subd. (h).) It is undisputed that she failed to do so. Moreover, the record reflects that both children have repeatedly expressed their desire to stay with their paternal aunt, who has stated she is willing to accept legal guardianship.

"Absent exceptional circumstances, the reviewing court must decide the petition on the merits by written opinion." (Rule 8.452(h)(1).) Mother's failure to comply with rule 8.452 constitutes exceptional circumstances justifying the summary denial of her petition. "Because of the intolerable burden that would otherwise be foisted on the Courts of Appeal, we deem the failure to tender and substantively to address a

specific material issue or issues or to furnish an adequate record to be 'exceptional circumstances' . . . which excuse the court from reviewing and determining a petition on the merits." (*Joyce G. v. Superior Court* (1995) 38 Cal.App.4th 1501, 1512; see also *Glen C. v. Superior Court, supra*, 78 Cal.App.4th at p. 584 [announcing future intent to summarily deny petitions that do not comply with former rule 39.1B, now rule 8.452]; *Anthony D. v. Superior Court* (1998) 63 Cal.App.4th 149, 157 [petitions that fail to meet the "threshold requirements" should be summarily denied].)⁴

DISPOSITION

The petition for extraordinary writ is denied. This opinion is final forthwith as to this court.

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PERREN, J.

We concur:

GILBERT, P.J.

YEGAN, J.

⁴ In light of our conclusion, we need not address HSA's claim that mother had no authority to file a writ petition on her own behalf because she was represented by counsel at the juvenile court hearing. (Rule 8.450(c).)

Ellen Gay Conroy, Judge
Superior Court County of Ventura

A.D., in pro. per., for Petitioner.

No appearance for Respondent.

Leroy Smith, County Counsel, Linda Stevenson, Assistant County Counsel,
for Real Party in Interest.